

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHAEL D KELLER**  
Claimant

**BARNUM QUALITY HARDWOOD FLOORS**  
Employer

**APPEAL 19R-UI-09916-AD-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 09/22/19**  
**Claimant: Appellant (1R)**

Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On October 30, 2019, Michael Keller (claimant/appellant) filed an appeal from the October 17, 2019 (reference 02) unemployment insurance decision that denied benefits.

Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for 9:00 a.m. on November 22, 2019. No hearing was held because the claimant failed to provide a telephone number at which he could be reached for the scheduled hearing. On November 25, 2019, a default decision was issued, dismissing claimant's appeal.

On December 3, 2019, claimant appealed to the Employment Appeal Board (EAB). On December 13, 2019, the EAB remanded the matter to the Appeals Bureau for a hearing on the merits.

A telephone hearing was held on January 10, 2020, at 9:00 a.m. The parties were properly notified of the hearing. Claimant participated personally. Barnum Quality Hardwood Floors (employer/respondent) participated by owner Gary Barnum.

Official notice was taken of the administrative record, including the Unemployment Insurance Online Appeal, the Notice of Claim, and the Statement of Protest.

**ISSUE(S):**

- I. Is the appeal timely?
- II. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to claimant at the above address on October 17, 2019. That was claimant's correct address on that date. The decision states that it

becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 27, 2019. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant appealed the decision online on October 30, 2019. Claimant's appeal was received by Iowa Workforce Development on that date. Claimant does not recall when he received the decision. Claimant did not submit the appeal by the October 27, 2019 deadline because he did not read the decision closely.

The administrative record shows the Notice of Claim was mailed to employer on September 24, 2019, with a due date of October 4, 2019. The Statement of Protest was not received until after the close of business on October 7, 2019. No fact-finding decision has been issued regarding whether employer's protest was timely.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the October 17, 2019 (reference 02) unemployment insurance decision that denied benefits is **AFFIRMED**. The administrative law judge concludes the claimant's appeal was untimely and he is therefore ineligible for benefits, pending a decision on the remanded issue set forth below. Because the administrative law judge determines the claimant's appeal was untimely, he makes no findings of fact or conclusions of law regarding the separation from employment.

The administrative law judge **REMANDS** this matter to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination regarding the timeliness of employer's protest, with notice and opportunity to be heard provided to the parties, and a decision issued with appeal rights.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
  - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
  - (b)
  - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion? *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

Claimant received the decision. There is no evidence showing there was any delay in claimant's receipt of the decision. Any delay in submitting the appeal was due to claimant's failure to closely read the decision and submit the appeal as directed. The delay was not due to agency error or misinformation or delay of the United States Postal Service.

The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

The October 17, 2019 (reference 02) unemployment insurance decision that denied benefits is **AFFIRMED**. The administrative law judge concludes the claimant's appeal was untimely and is ineligible for benefits, pending a decision on the remanded issue set forth below.

**REMAND:**

The administrative law judge **REMANDS** this matter to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination regarding the timeliness of employer's protest, with notice and opportunity to be heard provided to the parties, and a decision issued with appeal rights.

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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

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Decision Dated and Mailed

abd/scn